Accordingly, I find it necessary to say a few words about it. The facts in that case were that about 4 a.m. customs officers having broken down the locked front door of a house went to a room inside it. As they approached that room the Appellant came out of it and on entering it they found a number of other persons engaged in preparing chandu. On these facts the Appellant in that case was convicted. The learned President in the course of his judgment said that he considered all persons who were found in a room at a time when a raid is made to be occupiers for the purpose of section 3 (2) of the Proclamation and went on to hold that the Appellant had not discharged the onus thereby put upon him. The Appellant appealed and his main ground of appeal was that the learned President erred in law in the interpretation which he had given to the word "occupier".

At the hearing of the appeal it was argued for the Appellant that the word "occupier" in section 3 (2) meant a person who was in legal occupation of or lived in the premises in question. For the Respondent it was argued that all persons found in a room at the time when a raid is made are occupiers for the purpose of section 3 (2) and that as used in section 3 (2) the term occupier is sufficiently wide to include not only a tenant but also a licensee or even a trespasser. Having considered these submissions and having for reasons which he stated rejected as inapplicable the judgment of Innes, J.C., in the case of *Choo Ah Tee v. The Public Prosecutor*[3] where residence on premises and some exercise of control over them were held to be essential to occupation for the purposes of the Common Gaming Houses Enactment, His Lordship came to the following conclusion :—

"In section 3(2), however, the word "occupier" stands alone, and I am of opinion that in this particular sub-section of the Proclamation "occupier" must mean anyone who is found in any part of the premises from which other persons are excluded. I do not think it can be meant only to include persons who necessarily reside on the premises, or that part of the premises, or who have control in running the premises or that particular part of the premises. I therefore think in this case where the Appellants were discovered in a closed room in a closed house, out of which room the 1st Appellant emerged on the entrance of the Customs officials at 4.00 a.m., that they are rightly held by the learned President to be occupiers of that room, and that, therefore, as chandu was found in that room the presumption under section 3(2) arose as against them all."

In view of the way in which it came before the Court I do not think that *Ong Eng Soo's* case can be taken as deciding anything more than that physical presence on premises may amount to occupation of them for the purposes of section 3 (2) of the Proclamation and that on the facts of that particular case the physical presence of the Appellant on the premises did amount to occupation.

In the present case, however, the facts are different and, as against the present Appellant, very much stronger. On his own admissions, either as an individual or as a member of a partnership, he paid the rent of the room in which the chandu was found, he kept a safe containing money in it and he visited it from time to time for the purpose of transacting business. On these facts the learned President was, in my opinion, right in holding that the Appellant was an occupier of the room. Once that point was reached the chandu which was in fact found in the room was to be deemed to be in the possession of the Appellant and his conviction became inevitable unless he satisfied the Court that the balance of probability was against his having been in possession of it. I see nothing in the record to suggest that the learned President misdirected himself as to the nature or the weight of the burden that was thereby placed upon the Appellant and having read through the evidence with care I do not think that he could have arrived at any other conclusion than that it had not been discharged.

The appeal is accordingly dismissed.

I would add that though I have no doubts as to the correctness of my decision in this case it is the third time at least within a period of little over six months that the question of what is an occupier for the purposes of section 3 (2) of the Opium and Chandu Proclamation has been raised in criminal appeals in the State of Perak alone. In view of the pertinacity with which cases under this Proclamation are generally contested, I have no doubt it will continue to be raised in the future. In the circumstances, I am prepared, if I am asked to do so, to grant a certificate under section 34 of the Courts Ordinance to enable the point to be taken to the Court of Appeal.

Appeal dismissed.

SUPPIAH CHETTIAR v. PUNG SEK KHOON.

[Orig. Civ. Juris. (Thomson, J.) April 17, 1950]

[Ipoh — Civil Application No. 13 of 1950]

Japanese Judgments and Civil Proceedings Ordinance, 1946, s. 4 — Application for leave to carry on proceedings commenced before Japanese Court — Application out of time — Special circumstances.

This was an application for an extension of time to file an application for leave to carry on certain proceedings commenced before a Japanese Court. The application was made under s. 4 of the Japanese Judgments and Civil Proceedings Ordinance which provides that a party to any

proceedings commenced before a Japanese Court which were pending at the cessation of the Japanese occupation may apply for leave to carry on such proceedings within three months from the commencement of the Ordinance or within such extended time as the Court may allow. In **M. K. Lukshumeyah v. Low Shong Khay** (1) Willan, C.J., had decided that the provisions of the Japanese Judgments and Civil Proceedings Ordinance did not override the provisions of the Moratorium Proclamation and that accordingly an application made in 1947 for leave to carry on proceedings under s. 4 of the Ordinance must be dismissed. The provisions of the Moratorium Proclamation ceased to have effect after 30th September 1949. The present application was made on the 16th March 1950, that is, some three years and five months after the commencement of the Japanese Judgments and Civil Proceedings Ordinance. The only excuse for the delay made by the applicant was that he had made attempts to obtain payment of his debt without recourse to further legal proceedings.

Held, (1) that to justify the granting of an extension of time under s. 4 of the Japanese Judgments and Civil Proceedings Ordinance the applicant must show special circumstances of an extremely substantial nature; (2) that up to a point the existence of the Moratorium Proclamation constituted such a special circumstance; (3) that in the absence of special circumstances a party should only be allowed to rely on the existence of the Moratorium Proclamation for a period of three months after that Proclamation came to an end; (4) that no such special circumstances were shown in this case and therefore the application must be dismissed.

Case referred to :—

(1) *M. K. Lukshumeyah v. Low Shong Khay* (1947) M.L.J. 135.

CIVIL APPLICATION.

M. S. Mahendran for the applicant.

K. C. Chan for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This is an application for an extension of time to file an application for leave to carry on certain proceedings commenced before a Japanese Court and is made under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946.

By section 4 of the Ordinance a party to any proceedings commenced before a Japanese Court which were pending at the cessation of the Japanese occupation may apply for leave to carry on such proceedings within three months from the commencement of the Ordinance which was on 7th November, 1946, or within such extended time as the Court may allow.

In the case of *M. K. Lukshumeyah v. Low Shong Khay*(1) it was held by Willan, C.J., that the provisions of the Japanese Judgments and Civil Proceedings Ordinance did not override the provisions of the Moratorium Proclamation and that accordingly an application made in 1947 for leave to carry on proceedings under section 4 of the Ordinance must be dismissed.

The provisions of the Moratorium Proclamation ceased to have effect after 30th September, 1949.

The present application was made on 16th March, 1950, that is to say, some three years and five months after the commencement of the Japanese Judgments and Civil Proceedings Ordinance, and the extension of time asked for is therefore more than three years and two months. To justify the granting of such an extension it is hardly necessary to say that the Applicant must show special circumstances of an extremely substantial nature.

In the exercise of my discretion I am prepared to say that up to a point the existence of the Moratorium Proclamation constituted such a special circumstance. That Proclamation probably did not prevent an application being made to the Court for extension of time under section 4 of the Ordinance, but in view of the decision in *Lukshumeyah's* case, to make such an application would have been useless and a waste of costs for even had it been granted the Court could not have gone on to grant leave to carry on the proceedings. Moreover, the Moratorium Proclamation was in existence at the time of the enactment of the Japanese Judgments and Civil Proceedings Ordinance, and it is reasonable to suppose that the Legislature did not contemplate that the provisions of section 4 of the Ordinance should be rendered wholly nugatory by the continued existence of the Proclamation beyond a period of three months from the commencement of the Ordinance.

The Proclamation, however, came to an end on 30th September, 1949, and the question therefore arises for how long after that date is a party applying for extension of time under section 4(1) of the Ordinance entitled to rely upon its existence as a special circumstance which would entitle him to an extension of time.

I have no intention of laying down any general rule on the point and indeed it would be improper to do so in a case which involves the exercise of my discretion. Nevertheless, as the question is likely to arise frequently for some time, I have taken time to consider it and to discuss it with my brother Hill. In my opinion, with which I understand my brother to be in agreement, in the absence of any special circumstances a party should only be allowed to rely on the existence of the Moratorium Proclamation for a period of three months after that Proclamation came to an end. The Ordinance itself provided that applications for leave to proceed should be made within three months from its commencement and it seems only reasonable in the light of the events that have happened to say that applications for leave to proceed should ordinarily be made within three months of the date on which it became possible to make them with any reasonable

prospect of success, that is within three months of 1st October, 1949.

The present application was not made until 16th March, 1950. I have read with care the affidavits filed in support of it and in them I can find no reasonable excuse for the Applicant having failed to make his application immediately after the end of the Moratorium Proclamation. His excuse is that he made attempts to obtain payment of his debt without having recourse to further legal proceedings. That may well be, but ordinary prudence demanded that he should take timeous steps to protect his rights in the event of a settlement proving impossible, and if he failed to take such steps timeously he cannot now come to the Court to get him out of his difficulty.

The application is dismissed with costs to the Respondent.

Application dismissed.

In Re TAN SOH SIM (F) DECD.;
THE OFFICIAL ADMINISTRATOR, FEDERATION OF MALAYA
v.
TAN SAW KEOW AND 17 OTHERS.

[Orig. Civ. Juris. (Thomson, J.) April 19, 1950]

[Ipoh — Originating Summons No. 331 of 1941]

Distribution Enactment — Distribution of estate of a Chinese domiciled in Perak — Law applicable — Document renouncing rights in an estate — Whether there was sufficient consideration — Natural love and affection — Whether parties stood in near relation to each other — Contract Enactment, s. 25.

In this Originating Summons the Official Administrator, the administrator of the estate of Tan Soh Sim deceased, applied for the determination of the manner in which the estate was to be distributed. It appeared that some of the persons who claimed shares in the estate had signed a document purporting to give up their claims to the estate in favour of other persons. One of the questions raised was whether this document was valid and binding on the parties to it.

Held, (1) that as the parties in this case, including the deceased, were domiciled in Perak, the law applicable was the law in Perak; (2) that the parties to the document in question did not stand in a near relation to each other within the meaning of s. 25 (a) of the Contract Enactment; that further, on the facts it did not appear that the document was made on account of natural love and affection; and therefore the document was not binding on the parties.

Cases referred to :—

(1) *Whithorne v. Harris* 2 Ves. Sen. 528.

(2) *Nisar Ahmad Khan v. Rahmat Begum* A.I.R. (1927) Oudh 146.

(3) *Appa Pillai v. Ranga Pillai* I.L.R. 6 Mad. 71.

(4) *Sarwan Singh v. Mt. Malan* A.I.R. (1929) Lah. 169.

(5) *Mohamed Syedol Ariffin v. Yeoh Ooi Gark* (1916) L.R. 2. A.C. 575.

(6) *Ellen Abd-ul-Messiah v. Chukri Farra* (1888) 13 App. Cas. 431.

(7) *Yap Tham Thai v. Low Hup Neo* (1919) 1 F.M.S.L.R. 383.

(8) *King v. Godwin* 6 Bing. 576.

ORIGINATING SUMMONS to determine the manner in which the estate is to be distributed.

R. W. Peters and *C. W. Shuttleworth* for the plaintiff.

M. S. Mahendran for the first defendant.

H. T. Ong for the third and sixth defendants.

R. Ramani and Chin Swee Onn for the second, fourth, fifth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth defendants.

Seventh, eighth, ninth and eighteenth defendants no appearance.

Twelfth defendant in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Thomson, J. : — This Originating Summons was issued by the Official Administrator who is the grantee of Letters of Administration in the estate of Tan Soh Sim, deceased, to have determined the manner in which the estate is to be distributed.

Tan Soh Sim who died intestate at Teluk Anson at about 1 a.m. on 8th February, 1939, and to whom I shall refer in the course of this judgment as the deceased, was the widow of Chan Choo Yean. Chan Choo Yean died in 1932 and was survived by two widows, the deceased with whose estate I am here concerned and a secondary widow Tan Boey Kee who is the 17th Defendant to these proceedings, two adopted sons Chan Lam Keong and Chan Beng Keong who are the 13th and 14th Defendants, and two adopted daughters Chan Poh Keat and Chan Poh Hup who are the 15th and 16th Defendants. By his will which is dated 25th March, 1916, he appointed the deceased as executrix. Subject to one trifling legacy, he left the whole of his estate to the deceased in trust with virtually unlimited powers of sale, conversion and investment and with beneficial enjoyment of the whole income during her life. On her death the estate was to be divided in such shares and in such manner as she might